

SECTION 00500

AGREEMENT FORM

2016 CDBG Curb and Sidewalk Replacement Project

This agreement, made this 13th day of September, 2016 at West Lafayette, Indiana, by and between the Board of Public Works and Safety for the City of West Lafayette, Indiana (hereinafter referred to as the "**City**") and Dixon Construction (hereinafter referred to as the "**Contractor**").

WITNESSETH:

That in consideration of the mutual covenants hereinafter set forth, the **City** and the **Contractor** agree as follows:

Article 1: SCOPE OF WORK

The **Contractor** shall furnish all labor and tools and equipment and do all things required for complete installation, construction, and resurfacing in accordance with the plans and specifications. The plans and specifications shall be on file in the office of the City Engineer.

Article 2: PAYMENT

The **City** shall pay to the **Contractor**, in full and complete payment for all performance of the Contract, in current funds. The estimated sum of Two Hundred Thirty Five Thousand Nine Hundred Fifty Dollars and Zero Cents (\$235,950.00) defined as the contract price, and computed from the Contractor's Bid included herein. The final contract price will be the result of the actual installed quantities of materials multiplied by the corresponding contract unit prices. Variance from the estimated plan quantities will be done by change order for any additions or deletions to the contract as determined by the work and approved by the West Lafayette Board of Public Works and Safety.

Said contract price shall be paid to the **Contractor** in installments in the manner provided in, and under conditions of, the General Conditions.

If litigation is commenced to enforce any term of this contract, the prevailing party is entitled to receive litigation costs including reasonable attorney fees.

Article 3: CONTRACT DOCUMENTS

The contract documents include this agreement, current wage rate table, the General Conditions, Special Conditions, Materials Specifications, the Contractor's maintenance bond, and the Contractor's certification of insurance, together with plans and any

subsequent addenda.

Said documents are hereby incorporated into and made a part of this agreement the same as if herein fully set forth.

Article 4: SEVERANCE

The intent of the parties is that this agreement be deemed entire in the sense that its purpose is to establish one price for the doing of the whole work, and that it be deemed severable in the sense that the voidance of any part or portion shall not void the remainder.

It is understood and agreed that partial payments may be made for the mutual convenience of the **City** and **Contractor** but shall not be construed as the City's acceptance of a part or portion of the work. Acceptance is to only in the manner prescribed in the General Conditions.

Article 5: RECORDS

The **Contractor** will maintain proper records for review by the **City**.

Article 6: DATE OF COMPLETION

The **Contractor** agrees that he will have the work contained in this contract substantially completed by July 14, 2017 and final completion by July 28, 2017

Article 7: INSURANCE

During construction of the Project, **Contractor** shall maintain policies of insurance for Workers' Compensation as well as general liability insurance in the amount of \$1,000,000 or more. Each such policy shall: (a) be written by a company reasonably acceptable to **City**; and (b) provide that it shall not be modified or canceled without written notice to **City** at least 30 days in advance. The policy of general liability insurance required by this Section to be maintained by **Contractor** shall name the **City** as an additional insured. **Contractor** shall deliver to the **City** certificates of the insurance policies required by this Section, executed by the insurance company or the general agency writing such policies.

Article 8: INDEMNITY AND HOLD HARMLESS AGREEMENT.

The **City** shall be indemnified, held harmless, and defended by **Contractor** for any claims whatsoever arising out of, as a result of, or in connection with the work performed by **Contractor** including, but not limited to:

(i) injury to, or death of, persons or loss of, or damage to, property, suffered in connection with performance of any work on the project site by **Contractor** or any party acting by,

under, through, or on behalf of **Contractor**;

(ii) the negligence or willful misconduct of **Contractor** or any party acting by, under, through, or on behalf of **Contractor**; or

(iii) the breach by **Contractor** of any term or condition of this Agreement;

Further, **Contractor** shall be responsible for obtaining or maintaining any permits required by any governmental or public or private administrative body, whatever it may be, in connection with the services set out in Article 1. **Contractor** shall be required to ensure that the company, and its operations in connection with the services set out in Article 1, conform to any applicable statutes, regulation, ordinances, treaties, rules of common law, or other law.

Article 9: PREVAILING PARTY – ATTORNEY FEES

Notwithstanding any term or condition in this Contract to the contrary, in the event litigation is commenced to enforce any term or condition of this Contract, the prevailing party shall be entitled to costs and expenses of litigation including a reasonable attorney fee.

Article 10: ENGAGING IN ACTIVITIES WITH IRAN

By signing this Contract, **Contractor** certifies that it is not engaged in investment activities in the country of Iran as set forth in I.C. 5-22-16.5.

Article 11: E-VERIFY

Contractor shall comply with E-Verify Program as follows:

a. Pursuant to IC 22-5-1.7, **Contractor** shall enroll in and verify the work eligibility status of all newly hired employees of **Contractor** through the E-Verify Program ("Program"). **Contractor** is not required to verify the work eligibility status of all newly hired employees through the Program if the Program no longer exists.

b. **Contractor** and its subcontractors shall not knowingly employ or contract with an unauthorized alien or retain an employee or contract with a person that **Contractor** or its subcontractors subsequently learns is an unauthorized alien. If **Contractor** violates this Section 9(b), the **City** shall require **Contractor** to remedy the violation not later than thirty (30) days after the **City** notifies **Contractor**. If **Contractor** fails to remedy the violation within the thirty (30) day period, the **City** shall terminate the contract for breach of contract. If the **City** terminates the contract, **Contractor** shall, in addition to any other contractual

remedies, be liable to the **City** for actual damages. There is a rebuttable presumption that **Contractor** did not knowingly employ an unauthorized alien if **Contractor** verified the work eligibility status of the employee through the Program.

c. If **Contractor** employs or contracts with an unauthorized alien but the **City** determines that terminating the contract would be detrimental to the public interest or public property, the **City** may allow the contract to remain in effect until the **City** procures a new contractor.

d. **Contractor** shall, prior to performing any work, require each subcontractor to certify to Contractor that the subcontractor does not knowingly employ or contract with an unauthorized alien and has enrolled in the Program. **Contractor** shall maintain on file a certification from each subcontractor throughout the duration of the Project. If **Contractor** determines that a subcontractor is in violation of this Section 7(d), **Contractor** may terminate its contract with the subcontractor for such violation. Such termination may not be considered a breach of contract by **Contractor** or the subcontractor.

e. By its signature below, **Contractor** swears or affirms that it i) has enrolled and is participating in the E-Verify program, ii) has provided documentation to the **City** that it has enrolled and is participating in the E-Verify program, and iii) does not knowingly employ an unauthorized alien.

Article 11: NON-DISCRIMINATION

Contractor agrees:

a. That in the hiring of employees for the performance of work under this contract or any subcontract hereunder, no contractor, or subcontractor, nor any person acting on behalf of such contractor or subcontractor, shall, by reason of race, religion, color, sex, national origin or ancestry, discriminate against any citizen of the State of Indiana who is qualified and available to perform the work to which the employment relates;

b. That no contractor, subcontractor, nor any person on his behalf shall, in any manner, discriminate against or intimidate any employee hired for the performance of work under this contract on account of race, religion, color, sex, national origin or ancestry;

c. That the **City** may deduct from the amount payable to the contractor a penalty of five dollars (\$5.00) for each person for each calendar day during the which such person was discriminated against or intimidated in violation of the provisions of the contract;

d. If there is a second or any subsequent violation of the terms or conditions of this section, then this contract may be cancelled or terminated by **City** and all money due or to become due hereunder will be forfeited.

IN WITNESS WHEREOF we have set our hands the day and year first above written.

CONTRACTOR:



Tom Dixon
Dixon Construction

WEST LAFAYETTE BOARD OF PUBLIC WORKS:

Sana G. Booker, President

Bradley L. Cohen, Member

Brooke E. Folkers, Member

Jason D. Huber, Member

Thomas J. Kent, Member

Attest:

Nichole A. Foster, Deputy Clerk

END OF SECTION